

FEDERAL ROOM

Federal Communications Commission

DA 01-399

2001 FEB 21 P 2:43

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

EIVED

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Junction City, Missouri)

MM Docket No. 01-48  
RM-10062

### NOTICE OF PROPOSED RULE MAKING

Adopted: February 7, 2001

Released: February 16, 2001

Comment Date: April 9, 2001

Reply Comment Date: April 24, 2001

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Bishop Community Radio, Inc. ("petitioner"), requesting the allotment of Channel 295A to Junction City, Missouri, as the community's first local aural service. Petitioner states that it will apply for the channel, if allotted.<sup>1</sup>

2. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "among the several states and communities." The Commission has defined a community as a geographically identifiable population grouping. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. See, Pleasant Dale, Nebraska, 14 FCC Rcd 18893 (1999), Avon, North Carolina, 14 FCC Rcd 3939 (1999) and Thermal, California, 15 FCC Rcd 2100 (2000). Junction City, in Madison County, is listed in the 1990 U.S. Census as a village and attributed with a population of 326 persons. However, we may find that a population grouping of 326 people does not constitute a community for allotment purposes where the community may be devoid of the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations. See, Searles Valley, California, 3 FCC Rcd 5221 (1988) and Naples, Florida, 41 RR 2d 1549 (1971). In addition, in past cases, we have rejected

<sup>1</sup> Section 1.52 of the Commission's Rules requires that all pleadings filed by parties not represented by legal counsel be signed and verified by the petitioner and provide the petitioner's mailing address. In this case, petitioner signed the petition and provided its address. However, it did not submit a statement attesting that the information included in the petition is correct and true to the best of its knowledge. Therefore, petitioner is requested to submit a subscription and verification statement in its responsive comments to this Notice.

claims of community status where a nexus has not been shown between the political, social, economic and governmental indicia to qualify it as a "community" for allotment purposes. See, Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991) and cases cited therein. In this case, we have been unable to determine that Junction City has any of the community factors set out above, including its own separate zip code. Instead, its zip code (63645) is attributed to Millcreek, Missouri. Therefore, petitioner should show that any community organizations, civic groups, etc., which exist have a nexus with Junction City.

3. We believe petitioner's proposal warrants consideration since the allotment of Channel 295A could provide Junction City with its first local aural service, if it is shown to be a community for allotment purposes. Channel 295A can be allotted to Junction City in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.2 kilometers (5.7 miles) northeast to avoid a short-spacing to Station KAUL, Channel 294A, Ellington, Missouri.<sup>2</sup>

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

| <u>City</u>             | <u>Channel No.</u> |                 |
|-------------------------|--------------------|-----------------|
|                         | <u>Present</u>     | <u>Proposed</u> |
| Junction City, Missouri | --                 | 295A            |

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before April 9, 2001, and reply comments on or before April 24, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Randall Eugene Spence, President/CEO  
Bishop Community Radio, Inc.  
5918 Fleming Drive  
Evansville, Indiana 47711  
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility

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<sup>2</sup> The coordinates for Channel 295A at Junction City are 37-37-33 NL; 90-12-18.

Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

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APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs,

or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.